

1

1 THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF NEW JERSEY
2 CRIMINAL NO. 05-318 (WGB)

9 Newark, New Jersey
August 3, 2006

10

11 B E F O R E : HONORABLE WILLIAM G. BASSLER,
12 Senior U.S.D.J.

13

APP E A R A N C E S :

14

CHRISTOPHER J. CHRISTIE, ESQ.,
United States Attorney,
BY: MELISSA JAMPOL, ESQ.,
Assistant United States Attorney
For the Government

17

RICHARD COUGHLIN, ESQ.,
Federal Public Defender
BY: DONALD MC CAULEY, ESQ.,
Assistant Federal Public Defender
For the Defendant

20

21

22 Pursuant to Section 753 Title 28 United States Code, the
record following transcript is certified to be an accurate
taken stenographically in the above entitled proceedings.

23

24

JOHN KEVIN STONE, C.S.R.
Official Court Reporter

25

JOHN KEVIN STONE, CSR

2

1 THE COURT: Good morning everybody.

2 May I have appearances, please.

3 MS. JAMPOL: Good morning, Your Honor.

4 Assitant United States Attorney Melissa Jampol
5 appearing on behalf of the Government.

6 MR. MC CAULEY: Morning, Your Honor.

7 Donald McCauley, Assistant Federal Public
Defender,

8 appearing on behalf of Erik Sanchez.

9 THE COURT: Mr. Sanchez, good morning.

10 THE DEFENDANT: Morning, sir.

11 the
12 THE COURT: Let me ask you this. Have you read
the presentence report?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And, counsel, have you reviewed the
15 presentence report with your client?

16 MR. MC CAULEY: Yes, Your Honor.

17 THE COURT: I adopt the presentence report's
18 findings as the court's.

19 that
20 the
he has the right to appeal the conviction if he believes

21 there's
guilty plea is somehow unlawful or involuntarily, or

22 wasn't
some other fundamental defect of the proceedings that

23 waived by the guilty plea.

24 Mr. Sanchez, you also have a statutory right to
25 appeal your sentence under certain circumstances,

JOHN KEVIN STONE, CSR

1 particularly if you think the sentence is contrary to
law.

2 You may have waived those rights as part of the plea
3 agreement -- you may have entered into a plea agreement
4 which waives some or all of your rights given the
sentence

5 itself. Those rights waivers are generally enforceable,
but

6 if you believe the waiver is unenforceable, you can
7 present your theory to the federal court.

8 At any rate, I advise you you have the right to
9 appeal in forma pauperis, and the court will prepare and
10 file a notice of appeal upon your request.

11 I further advise you that with few exceptions,
any

12 notice of appeal must be filed within ten days of entry
of a
13 judgment.

14 Counsel, I don't believe we have any dispute
over
15 the guideline range. The total offense level is 21,
16 criminal history category is five, which brings the
sentence
17 range to 70 to 87 months.

18 MR. MC CAULEY: Yes, Your Honor.

19 MS. JAMPOL: Yes, Your Honor.

20 THE COURT: Mr. McCauley, I'll hear you on your
21 application.

22 You can be seated.
23 MR. MC CAULEY: Your Honor, there was one
24 correction to the presentence report that I neglected to
25 communicate to the court. It's the date of birth. It
has

JOHN KEVIN STONE, CSR

1 his date of birth as 2-16-59, it's really 2-16-69.

2 THE COURT: 2-16 --

3 MR. MC CAULEY: 69.

4 THE COURT: 69:

5 MR. MC CAULEY: And he's 36 years old, not 46.

6 THE COURT: Okay. Thank you.

7 MR. MC CAULEY: Apologize for that.

8 THE COURT: All right.

9 the MR. MC CAULEY: Your Honor, you will note that

10 guidelines are advisory, and I'm asking that the court

70 11 sentence below the otherwise advisory guidelines for the

12 deportable to 87 months, essentially; that he's basically a

13 alien, once he completes whatever sentence Your Honor

14 the imposes, he will then be transferred to the custody of

15 Immigration and Naturalization Service, where he'll serve

16 another six months prior, before he gets deported.

17 Also, because of his status as an illegal alien,

18 months. he's not eligible for a halfway house the last six

19 THE COURT: Right.

20 MR. MC CAULEY: So just by virtue of his alien

21 status, he does a year more than any other defendant who

22 would be at level 21, category five. Meaning any citizen

23 doing any crime that yields a level 21 and a category
five

24 has this range, but they have the benefit of doing six

25 months less in a halfway house, and then don't face the

JOHN KEVIN STONE, CSR

1 subsequent incarceration.

2 THE COURT: Right.

3 MR. MC CAULEY: So that no where in the
guidelines

4 is that accounted for in the manuals.

5 THE COURT: Right.

6 MR. MC CAULEY: I'd ask Your Honor to take that
7 into consideration.

8 And then when you look at the 3553(a) factors --

9 THE COURT: Would you excuse me just a second.

10 (Pause).

11 THE COURT: I'm sorry, Mr. McCauley. Stay with
me.

12 Go ahead.

13 MR. MC CAULEY: When we look at the 3553(a)
14 factors, you know 3553(b) directs the court by statute
not
15 to impose as a matter of law anything beyond what is
16 necessary to achieve the four traditional goals of
17 sentencing. And all of those goals I think are primarily
18 directed toward citizens, people that are going to remain
in

19 our society, people that are going to walk our streets
20 again. We're interested that they be deterred, we're
21 interested that they be rehabilitated, and we're
interested
22 in retribution. I think those goals are less obtained in

23 the case of an alien who can never come back here. And
24 never be back here.

25 Now, he did come back illegally. And that's the

JOHN KEVIN STONE, CSR

1 offense in this case. But I'm saying it's been a long
2 road

3 for him. But he's got the message, knowing he can't come
4 back here again. He was under a misimpression, and
5 apparently it's a misimpression throughout the Central
6 American, Latin American countries, that if you come back
7 and you behave, you don't get arrested, and you have a
wife

8 who's a citizen, have children who are citizens, that
some

9 day you'll be able to stay here. That's a total fallacy.
10 But that was his impression.

11 He knows it loud and clear now that that can't
12 happen. These deportation laws are mandatory. But that
explains why he thought he could come back.

13 And the Congress even contributes to that
14 impression, I suggest, in the last two years, in talking
15 about all immigration reform, and whether this provision
is

16 going to amnesty or it's going to be effective amnesty,
and

17 that word goes out through the world, and it's a
18 misimpression. It doesn't exist.

19 But it's loud and clear now. 16 months after
his

20 arrest in this case he knows he can't come back. He's
21 looking to make a life in Spain, hopefully, where his
22 children who were citizens can visit with him.

23 So I think when Your Honor looks, we have
someone,

24 why incarcerate him for six years, when, at that great

25 expense, needless expense, when you could impose
something

JOHN KEVIN STONE, CSR

1 less, and still achieve those four goals under 3553.

2 And taking into consideration the hard time he's
3 done, my papers say 13 months, that was when I began
4 drafting this. It's actually 16 months. I know the
5 Government is going to stand up and say, well, at least

the

6 three months were McCauley's fault, and I accept the
7 responsibility for that.

8 But even the 13 months, it's a hell there in
9 Passaic County. The Government criticizes me that the
10 exhibits I attached, especially I guess from the Sheriff
11 Speziale, who runs that building, are dated. Sheriff
12 Speziale said nothing to contradict those documents in

all

13 of this time.

14 We also know six months ago the Department of
15 Homeland Security canceled a contract with the Passaic
16 County Jail because of the conditions under which their
17 people were being housed. They couldn't tolerate
anymore.

18 There were a number of civil litigations going on, and it
19 was easier to cancel the contract than try to defend the
20 conditions at that jail.

and

21 I would ask Your Honor to consider all of that

here.

22 sentence below the guidelines. He's never coming back

23 And whatever sentence Your Honor imposes, I'd ask that
you

24 recommend that be designated to serve his time at FCI

25 Beaumont, Texas. He has an elderly father and mother who

JOHN KEVIN STONE, CSR

1 live in Houston. And that is the closest facility to
2 Houston. They will be able to visit him for whatever
period
3 of incarceration he has. Because it's not likely they'll
be
4 able to visit him once he's deported, never to return
here.

5 Thank you.

6 THE COURT: You're welcome.

7 Before I impose sentence, Mr. Sanchez, is there
8 anything you would like to say?

9 THE DEFENDANT: Yes, sir.

10 First of all, I would like to apologize to you
and
11 to this country for all the offense I have done. And my
12 original purpose was to be reunited with my kids and
wife.

I
13 I took that chance, and I understand that I have to be --
say
14 got to be punished. And I also, you know, would like to
15 that this 16 months that I've been in Passaic County
Jail,
16 it put me, you know, sick. And I'm completely destroyed,
17 you know, by being in that count --

18 THE COURT: By what?

19 THE DEFENDANT: -- by being in that Passaic
20 County. That's all I got to say, sir.

21 THE COURT: All right.

22 Please be seated.

23 The Government have anything to add?

24 MS. JAMPOL: Your Honor, I addressed many of
these

25 arguments in my first submission to the court.

JOHN KEVIN STONE, CSR

1 THE COURT: Right.

2 MS. JAMPOL: Which addresses a number of these
3 things.

4 Just to highlight some things, in response to
Mr. .

5 McCauley's comments here today. The basic gist of the
6 defendant's application is that he should be rewarded
before this court for being an illegal alien. That is his view
in

8 his first request, stating that he would serve additional
9 time of six months, and that he's not eligible for a
halfway

10 house as an alien status. And the Government's response
to

11 that -- and the second point that Mr. McCauley makes, is
12 nowhere in the guidelines is this particular factor
13 addressed, and there's two responses I want to make to
that.

14 The first is that as Your Honor well knows, over
each the 18 year history of the sentencing guidelines, that
where specific offense is specifically examined to determine
16 on the sentencing guideline range, which level category
17 offense should it be determined, should the defendant --
18 should the defendant meet that particular area. And the
20 defendant in this particular case started off as a level
21 eight, but received a 16 point enhancement due to his

22 criminal history, and the fact that he'd been previously
23 deported. That, in and of itself, is -- shows the
careful
24 planning the guidelines have taken to take into
25 consideration the defendant's particular status. And as

JOHN KEVIN STONE, CSR

10

realm 1 such, I would urge Your Honor to look at him not in a
 2 of all individuals who are classified as level 21
offenders,
 3 whether they be individuals who were carrying handguns
 4 illegally as convicted felons, or as any other narcotics
 5 offense, but to look at the defendant in the category of
have 6 individuals who have been previously deported and who
 7 illegally re-entered this country. And as such, it is
the 8 Government's contention that the guidelines do take this
 9 into consideration when determining which level category
the 10 defendant would fit in. And as such, it is the
Government's
 11 position that the guideline sentence in this particular
case 12 is a reasonable sentence, as I indicated in my August 1st
 13 submission.
no 14 The second is in response to Mr. McCauley that
 15 where in the guidelines does it take into consideration
that 16 the defendant is a deportable alien. And that is because
it 17 is a specific factor that is specifically prohibited
under 18 the sentencing guidelines.
 19 Under the guideline regime, as Your Honor knows,

20 the defendant's alien status and his status is something
21 that the court was not permitted to take into account.
of
22 course, under the Booker regime and under Section 3558,
that
23 is something Your Honor is entitled to take into
24 consideration.
stated
25 But it is the Government's contention, as I

JOHN KEVIN STONE, CSR

11

of

and

what

he

entered

the

1 in my memorandum to the court, that it actually should be
2 looked at the other way. It should be looked at in one
3 the goals of Section 3553(a), this action of deterrence
4 this action of the need to promote respect for the law.

5 This particular defendant does not stand before
6 this court having been deported once. He was deported on
7 two separate occasions. On two separate occasions he
8 appeared before an immigration judge and was specifically
9 warned that he was not permitted to re-enter this country
10 without specific authorization by the Attorney General.

11 There's paperwork that's been turned over to the
12 defense as part of the discovery that indicates that the
13 defendant specifically swore that he understood this
14 particular ruling by the court. And in both cases the
15 defendant promptly ignored the ruling of the court, did

16 he wanted, and re-entered the country. But it's not only
17 re-entered the country, Your Honor. It's once he re-
18 the country he continued to commit crimes.

19 The defendant has indicated to Your Honor that
20 reason he re-entered this country was to be reunited with
21 his wife. But as the PSR makes very clear, he not only

22 reunited with his wife, he then committed crimes against
his

23 wife. And he was arrested in Texas after a domestic

24 altercation involving his wife. And as the PSR makes
clear,

25 there were numerous restraining orders involving him and
his

JOHN KEVIN STONE, CSR

1 wife, and if Your Honor would like me to point out the
2 specific statutes in the PSI that make it clear.

3 So the defendant has managed to rack up a
criminal

4 history category of five, which is for all the criminal
5 offenses that he's done in this case in this country.

6 Additionally, the defendant's conduct while in
this

7 country indicates the fact that he was charged with death
by

8 auto in Union County in -- and he fled to Texas, as the
PSI

9 makes clear. And it took a numbers of years for the
10 authorities to locate him. And he had to be extradited
from

11 Texas back to Union County here in New Jersey to face
those

12 charges. By that point, the case was a number of years
old

13 and the defendant was sentenced to five years
incarceration

14 after that particular offense. That was the offense that
15 was one of the two offenses that served the basis for his
16 first deportation.

17 So it's the Government's contention here that
the

18 defendant clearly has shown no respect for the laws of
this

19 country while he's in this country and, rather than being

20 rewarded for his alien status, that under the factors
listed

21 in Section 3553(a), the defendant should be held
22 accountable.

23 The second, Your Honor, is the defendant's
argument

24 that he has had a harsh condition in Passaic County Jail,
25 and I'm sure this is not the first application Your Honor

JOHN KEVIN STONE, CSR

13

not 1 has seen based on this particular submission. And I'm
2 going to stand up here and claim that staying in Passaic
3 County Jail is the same as staying in the Waldorf.
Because
4 that would not be the truth.

is a 5 But the bottom line is, Your Honor, is that it
Honor 6 correctional facility. And as I've indicated to Your
7 in my submission, the defendant hasn't proven that his
8 experience there was in any way out of the ordinary. It
9 might not have been pleasant, and I'm not going to stand
10 here and defend --

many 11 THE COURT: Please don't do that. I've had so
of 12 defendants who have consistently over the years told me
13 the conditions in that jail. They're intolerable.

increase 14 MS. JAMPOL: Yes. And I've been seeing an

15 counterparts 15 in those motions, and I've been speaking to my
16 to relay that. So I won't do that before Your Honor.

17 to 17 What I will do is point to the case law in our
18 circuit, as I do, that indicates that the defendant has
19 prove that his stay was out of the ordinary.

take 20 THE COURT: It is out of the ordinary. I can

21 judicial notice of that. Because in the years I've been
22 sitting here meting out sentences, I had affidavits --
now I
23 don't have one here, but I certainly can take judicial
24 notice that the conditions in that facility are
intolerable.
25 I had a defense attorney come up from the south and he
said

JOHN KEVIN STONE, CSR

1 he's never seen anything like it yet in his practice.

2 Anyway, it's not your fault.

3 MS. JAMPOL: Obvious --

4 THE COURT: But --

5 MS. JAMPOL: -- and obviously the message is
6 something that our office is looking at, this issue.

7 THE COURT: Well, you better look at it well.

8 MS. JAMPOL: I will impart that. I have had
9 discussions with my supervisor.

10 THE COURT: It's not right. It's not human.

It's

11 just not fair to put somebody in that kind of a facility.

make,

13 and take it for what it's worth, Your Honor, is that the
14 length of the defendant's stay at Passaic was not
unusually

in

15 long. And I myself have handled -- and you're looking
16 skeptical, but I'm going to keep on making the argument,
17 Your Honor, is I've had cases where defendants have been
that jail for a much longer period of time.

19 THE COURT: So have I.

for

20 MS. JAMPOL: For example, a case I just finished
21 before Judge Cavanaugh, there were defendants in there
over three years.

23 THE COURT: Well --

24 MS. JAMPOL: So the defendant's length of stay,

25 based on other cases in this district, was not
particularly

JOHN KEVIN STONE, CSR

15

1 long within that facility. And that's my argument on
that
2 point.

3 And I see where Your Honor is going with it, but
4 thank you for affording me an opportunity to make an
5 argument on this particular topic.

6 THE COURT: All right.

7 MS. JAMPOL: Thank you, Your Honor.

8 THE COURT: Let me address the defendant's
9 application for downward departure from the guidelines.

10 I'm denying that application on the guidelines,
11 because I recognize I have the discretion to downward
12 depart. And I choose not to exercise that.

13 In fashioning a sentence under the Booker
regime,

14 which is reasonable under the circumstances, under Booker

15 I'm required to take into consideration the factors
itemized

16 in 18 U.S. Code 235 (3)(a), that is, the nature and
17 circumstances of the offense; history and characteristics

of
18 the defendant; the need for a sentence which will be
19 sufficient, but not greater than necessary to reflect the
20 seriousness of the offense; to promote respect for the
law;

21 to provide just punishment; to afford adequate deterrence
to

22 protect the public from further crimes of the defendant;
and

23 to provide the defendant with needed educational,
24 rehabilitational training.

25 Realistically, what we're talking about here is
a

JOHN KEVIN STONE, CSR

16

1 sentence that is sufficient but not greater than
necessary.

2 There is a lot to be said in support of the Government's
in position here, in view of the criminal history category,

4 view of twice being deported to El Salvador. The message
5 doesn't seem to be getting through to you, Mr. Sanchez.

6 On the other hand, I'm not sure that we need to
7 impose a sentence of 70 months. To me that is
particularly

8 . harsh, in view of the amount of time that was spent in
9 Passaic County Jail. I don't care what you say, the
10 conditions that have been reported to me over the years
11 indicate to me that it's absolutely intolerable, and to
12 impose 70 months on top, or even giving reflection to --
to

13 impose a sentence in light of the amount of time this
14 defendant spent in Passaic County Jail isn't necessary to
15 provide adequate deterrence. Any amount of time in
Passaic

16 County Jail will provide that.

17 In terms of reflecting the seriousness of the
or offense, I don't think 70 months is necessary to do that
18 promote respect for the law. He would be given credit
19 anyway for the amount of time spent there.

20 I'm going to reduce the sentence by 24 months to

22 months, from 70 to 46. That, in my opinion, almost four
23 years, reflects the seriousness of the offense, promotes
24 respect for the law, provides just punishment, and meets
the
25 **statutory factors.**

JOHN KEVIN STONE, CSR

17

the 1 So, Mr. Sanchez, I don't know whether you got
you 2 message or not, but the next time around you could be
on 3 looking at even more than 70 months. Depends on where
it 4 want to spend your time. But it's up to you. But you're
of 5 the radar screen, so the next time around plan to spend
of 6 substantial amount of time in a federal facility.
shall 7 Pursuant to the Sentencing Reform Act of 1984,
of 8 is the judgment of the court that the defendant, Erik
of 9 Sanchez, is hereby committed to the custody of the Bureau
office 10 Prisons, to be imprisoned for a term of 46 months.
not 11 Upon release from imprisonment, Mr. Sanchez
device; 12 be placed on supervised release for a term of two years.
13 Within 72 hours of release from the custody of the Bureau
14 Prisons, he shall report in person to the probation
15 in the district to which he is released.
not 16 While on supervised release Mr. Sanchez shall
17 commit another federal, state or local crime; shall be
18 prohibited from possessing a gun or other dangerous
and 19 and shall not possess any illegal controlled substance;

20 shall comply with the other standard conditions that have
21 been adopted by this court.

22 Based on the information presented, Mr. Sanchez
is

23 excused from the mandatory drug testing provision but may
be

24 requested to submit to drug testing during the term of
25 supervision, if the probation officer determines a risk
of

JOHN KEVIN STONE, CSR

1 substance abuse.

2 In addition, he shall comply with the following

3 special conditions: He shall cooperate with the
Immigration

4 and Customs Service resulting from any problems in his
5 status; he shall provide truthful information to the
6 Immigration and Customs Service.

7 If deported, Mr. Sanchez shall not re-enter the
8 United States without permission of the attorney general.

9 If he does re-enter the United States, he shall report to
10 the nearest probation office within 48 hours.

11 He shall cooperate in the collection of DNA with
12 the probation office.

13 I find he does not have the ability to pay the
14 fine, I'll waive the fine.

15 Further ordered he shall pay to the United
States a

16 special assessment of \$100, which is due immediately.

17 The rationale for the sentence is simple enough.

18 the Mr. Sanchez is being sentenced for illegally re-entering

has United States after being deported to El Salvador. He

for three prior felony convictions, including a conviction

21 death by automobile. He has been twice deported to El
22 Salvador each time. Very difficult, I'm sure, to be

23 separated from your family. But I have no choice in
24 imposing the sentence to reflect the fact that he is
25 violating the law. He has accepted responsibility for
his

JOHN KEVIN STONE, CSR

19

1 actions; has acknowledged his wrongdoing; plans to return
to
2 El Salvador, or perhaps another country.

3 Based on all the factors presented, I think the
for
4 sentence I've imposed satisfies the sentencing criteria
the
5 the purposes of sentencing. Reflected in that also is
6 fact that he will be deported, which is an additional
7 penalty.

8 Is there anything else?

9 MS. JAMPOL: Nothing, Your Honor. Thank you.

10 THE COURT: Thank you.

11 MR. MC CAULEY: No, Your Honor. Except if you
12 could recommend the Beaumont facility.

13 THE COURT: Yes. That's Beaumont, Texas, I will
14 recommend that.

15 MR. MC CAULEY: Thank you, Your Honor.

16 THE COURT: Mr. Sanchez, good luck to you.

17 (Court adjourned).

18

19

20

21

22

23

24

25

JOHN KEVIN STONE, CSR